

HONAN PLANTATIONS SDN. BHD.

a

v.

KERAJAAN NEGERI JOHOR & ORS.
HIGH COURT MALAYA, JOHOR BAHRU
DATO' MOHD GHAZALI MOHD YUSOFF J
[CIVIL SUIT NO: 21-179-1995]
13 JANUARY 1996

b

CIVIL PROCEDURE: Striking out - Statement of claim - Rules of the High Court 1980, O. 18 r. 19(1)(a) & (2) - Inadmissibility of affidavit evidence - Writ action - Validity of compulsory acquisition proceedings - Whether some cause of action disclosed - Whether action obviously unsustainable - Power of Court to dismiss summarily - Order 18 r. 19 - Specific Relief Act 1950, ss. 8(1) & (3).

c

LAND LAW: Acquisition of land - Whether purpose of acquisition within Land Acquisition Act 1960 - Whether declaration is conclusive as to purpose specified therein - Whether State Authority acted wrongly in law - Whether plaintiff as affected landowner can invalidate acquisition - Whether acquisition proceedings null and void - Sections 3, 4, 8 & 68A.

d

ADMINISTRATIVE LAW: Exercise of administrative powers - Compulsory acquisition of land - Whether there is a right to pre-acquisition hearing - Whether there is a right to be heard - Whether breach of natural justice.

e

CONSTITUTIONAL LAW: Right to property - Whether acquisition in accordance with law - Federal Constitution, Art. 13(1).

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WORDS & PHRASES: 'Person' - Land Acquisition Act 1960, s. 3(b) - Interpretation Acts 1948 & 1967, s. 3 - 'State Authority' - Land Acquisition Act 1960, s. 2 - 'State land' - National Land Code 1965, s. 5.

This was an application by the defendants under O. 18 r. 19(1)(a) of the Rules of the High Court 1980 ('the RHC') to strike out the plaintiff's statement of claim on the ground that it disclosed no reasonable cause of action.

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The plaintiff was the registered proprietor of a piece of land ('the said land') in Johor Bahru. On 3 December 1992, a notification was issued by the Land Administrator ('the LA') under s. 4 of the Land Acquisition Act 1960 ('the Act') notifying the plaintiff that the said land was likely to be acquired by the State Authority. Subsequently, on 24 June 1993, a notification was issued by the LA under s. 8 of the Act that the said land would be acquired for the purpose of the second Malaysia-Singapore causeway project and the development of the Gelang Patah area.

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- a* The plaintiff submitted that prior to the issuance of the notice under s. 4 of the Act, the plaintiff's representatives had met with the then Menteri Besar ('the MB') of Johor to discuss its plans to develop and convert the said land, whereby, the MB had consented to the said plans. The plaintiff had, thereafter, submitted its plans for the development of the said land to the Lands and Mines
- b* Department. Subsequently, on 12 November 1992, United Engineers Bhd ('UEM') entered into an agreement with the Government of Malaysia and the State Government ('the 1st defendant') for the construction of the causeway and the development of a new township. On 7 April 1993, UEM entered into an agreement with the 1st defendant for the proposed acquisition of some
- c* 10,000 acres of land for the proposed development of the new township. It was under these circumstances that the two notices aforesaid came to be issued by the LA.

- d* The plaintiff contended, *inter alia*, that the decision by the defendants to acquire the said land was null and void and of no effect as the purpose declared in the said declarations did not come within the meaning of s. 3(b) of the Act, and, that as a result of the wrongful acquisition, the plaintiff had suffered damage.

- e* The main issue before the court was whether the notice issued by the LA to acquire the said land was null and void, and whether the stated purpose fell within the ambit of the Act.

Held:

- f* [1] An action for a declaration is a means of challenging administrative actions and decisions which a plaintiff claims to be unlawful.
- g* [2] The Act allows a State Authority to acquire any alienated land for any purposes which fall within the contemplation of s 3. Section 3(b) of the Act is so wide that it encompasses a host of activities which may, in the opinion of the State Authority, bring about economic benefit to the country or to the public. The building of a second causeway between Malaysia and Singapore, and the development of a new township within the surrounding area would definitely have such an effect.
- h* [3] The creation of a new township would definitely amount to a purpose which is beneficial to the economic development of that part of Johor and to the general public. The sitting of industries adjacent to the township might enhance bi-lateral trade between Malaysia and Singapore due to its proximity to the second causeway.
- i* [4] Section 8(3) of the Act provides that a declaration in Form D shall be conclusive evidence that all the scheduled lands referred to therein are needed for the purposes specified. This declaration is conclusive as to the purpose for which the land is required, and the State Authority is the best judge to determine what that purpose is.

- [5] The Act allows the State Authority to acquire alienated lands for purposes which fall within the contemplation of s. 3; it is a wide power. Parliament has prescribed a special formulae which, ostensibly, excludes judicial review; therefore, the only matters that can be litigated by the Court are limited to those prescribed in Part V of the Act. a
- [6] The approval or rejection of an application made – either under s. 124 of the National Land Code 1965 (‘the NLC’) read together with s. 52, or, under the provisions of s. 204 – shall be at the discretion of the State Authority. With respect, the MB is not the State Authority. The plaintiff’s proposal to develop and convert the said land would require a formal approval from the Exco; the MB acting alone is not the Exco, and any approval given by him, whilst acting alone, could not bind the Exco. b
- [7] There is nothing in the Act imposing an obligation for a pre-acquisition hearing – in marked contrast to the specific provisions for an inquiry and hearing in respect of the quantum of compensation payable. c
- [8] The pleadings did not disclose any cause of action or even raise any question fit to be decided in order to maintain the plaintiff’s suit against the defendants. d

Obiter dicta:

- [1] In seeking to establish liability against the State Authority, the plaintiff should have proceeded against the LA in the name of his office; the 1st defendant should never have been joined in these proceedings. e
- [2] The plaintiff’s stand – that the first defendant and/or the second defendant were/was the State Authority as defined in s. 2(1) of the Act – was incorrect. f

[Defendants’ application to strike out allowed]

Cases referred to:

- Ng Chee Keong & 3 Ors. v. Lembaga Letrik Negara & Anor.* [1991] 1 CLJ 567 **(foll)** g
- Imperial Tobacco Ltd. v. Attorney-General* [1981] AC 718 **(foll)**
- Syed Omar bin Abdul Rahman Taha Alsagoff & Anor. v. Government of the State of Johore* [1976] 1 MLJ 241 **(refd)**
- Yew Lean Finance Development (M) Sdn. Bhd. v. Director of Lands and Mines, Penang* [1977] 2 MLJ 45 **(refd)** h
- P.P. v. Datuk Haji Harun bin Haji Idris (No. 2)* [1977] 1 MLJ 15 **(foll)**
- S. Kulasingam & Anor. v. Commissioner of Lands, Federal Territory & Ors.* [1982] 1 MLJ 204 **(foll)**
- Abu Bakar bin Haji Yusuf v. Mohamed Hamzah bin Hanafiah & Anor.* [1978] 2 MLJ 78 **(refd)**
- Moore v. Lawson* [1915] 31 TLR 418 CA **(refd)** i
- Wenlock v. Moloney* [1965] 1 WLR 1238; [1965] 2 All ER 871 CA **(refd)**
- Hubbuck v. Wilkinson* [1899] 1 QB 86 **(refd)**

- a** *Att-Gen of Duchy of Lancaster v. L & NW Ry Co.* [1892] 3 Ch. 274, CA (**refd**)
Tractors Malaysia Bhd. v. Tio Chee Hing [1975] 2 MLJ 1 (**refd**)
Allen v. Flood [1898] AC 1 (**foli**)
Bradford Corporation v. Pickles [1895] AC 587 (**refd**)
Stamford Holdings Sdn. Bhd. v. Kerajaan Negeri Johor & 4 Ors. [1995] 3 CLJ 114 (**refd**)
- b** **Legislation referred to:**
Interpretation Acts 1948 & 1967, s. 3
Federal Constitution, Art. 13(1) & (2)
Land Acquisition Act 1960, ss. 1, 2, 3(b), 4, 7, 8(3), 10, 12, 14, 16, 22, 23, 24, 37, 38(1), 66, 68A
- c** Law of the Constitution for the State of Johor, Arts. 1, 2, 4, 6, 7
National Land Code, ss. 5, 42, 52, 124, 204B-204E
Rules of the High Court 1980, O. 18 r. 19(1)(a), (b), (c), (d), (2)
Rules of the Supreme Court, O. 25 r. 4
Specific Relief Act 1950, s. 8(1), (3)
- d** **Other source referred to:**
Jowitt's Dictionary of English Law, 2nd Edn.

For the plaintiff - Tommy Thomas (Lim Chee Wee with him); M/s. Skrine & Co.
For the 1st & 2nd defendants - Zainal Adzam Abdul Ghani, State Legal Adviser (Teo Say Eng, SFC with him)
- e** *For the 3rd defendant - Zaki Tun Azmi; M/s. Rashid & Lee*

JUDGMENT

Mohd Ghazali Mohd Yusoff J:

- f** The plaintiff to this action, a locally incorporated private company, which was the registered proprietor of a piece of land comprising an area of 2,466 acres and known as Grant No. 43821 Lot 1766, Mukim of Pulai, Johor (hereafter referred to as 'the said land') until it was acquired by the State Authority, Johor in 1993, has filed an action against the defendants on 3 August 1995 and in its statement of claim is asking for the following prayers:
- g**
- h**
- i**
- (i) a declaration that the decision by the State Authority to acquire the said land is null and void and of no effect;
 - (ii) an interlocutory injunction until further order or trial to restrain the third defendant (a locally incorporated company) or its agents or servants or otherwise howsoever from registering itself or its nominees as the registered proprietor of the said land, or taking any steps which may result in such registration, and a permanent injunction at the trial to the same effect;
 - (iii) an order that the endorsement of the purported acquisition of the said land on the register document of title be expunged within 14 days of an order of the Court;

- (iv) an order that the issue document of title of the said land be delivered to the plaintiff, without the endorsement referred in relief (iii) above, within 14 days of an order of the Court; **a**
- (v) a declaration that an agreement entered into between the plaintiff and the third defendant on 22 June 1995 (referred to as 'the Harvest Agreement') is null and void; **b**
- (vi) an interlocutory injunction until further order or trial restraining the third defendant or its agents or servants or otherwise from entering into physical possession of the said land or any part thereof; and
- (vii) damages and costs. **c**

The first and second defendants to this action have filed an application (encl. 8) pursuant to O. 18 r. 19(1)(a) of the Rules of the High Court 1980 requesting for an order that the pleading, i.e. the statement of claim be struck out on the ground that it discloses no reasonable cause of action. The third defendant has also filed a similar application (encl. 10) but based upon O. 18 r. 19(1)(a), (b), (c) and (d) of the said rules and in the course of it, both the third defendant and the plaintiff have filed affidavits. Both the applications were fixed for hearing on the same date but on that date, seeing that O. 18 r. 19(2) provides that no evidence shall be admissible on an application made under O. 18 r. 19(1)(a), I decided that I will only hear the application of the first and second defendants on that date, and adjourned the hearing of the application of the third defendant to another date. Accordingly this decision is based only upon the subject-matter of the application of the first and second defendants. **d**

Order 18 r. 19(1)(a) and (2) reads: **e**

- (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that: **f**
 - (a) it discloses no reasonable cause of action or defence, as the case may be; or **g**
 - (b) ... ;
 - (c) ... ;
 - (d) ... ; **h**
- and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
- (2) No evidence shall be admissible on an application under paragraph (1)(a).

In an application made under this rule, the only document that can be referred to would be the pleadings and in the instant case, the only pleading available is the statement of claim. Paragraph 3 of the statement of claim states that: **i**

- a* The first defendant and/or the second defendant is the State Authority for the State of Johor as defined in s. 2(1) of the Land Acquisition Act, 1960 ('the Act') or otherwise and is sued in this action in that capacity (hereinafter jointly and/or severally referred to as 'the State Authority').
- b* The plaintiff claims that in early 1990, it decided to develop and convert the said land, which was cultivated with oil palm, into a mixed commercial and residential development and consequently on 10 June 1990, its representatives met the then Menteri Besar of Johor to discuss its plans for such development. In para. 9 of the statement of claim, the plaintiff states that the Menteri Besar "was at all material times the Head of the Government of Johor and effectively
- c* exercised the powers and discretion conferred on the State Authority" under the Land Acquisition Act 1960 (hereafter referred to as 'the Act') "sometimes albeit in the name of the Sultan." Subsequently on 19 July 1990 the plaintiff submitted detailed plans for the development of the said land to the "Department of Lands and Mines, Johor".
- d* On 27 July 1990 the plaintiff's representatives again met the Menteri Besar and handed a letter which contained a detailed proposal to develop the said land and at this meeting, the Menteri Besar wrote the following on the said letter, namely, "I agree in principle with this application. The Lands and Mines Department is to expedite." The plaintiff claims that as a result of this, the
- e* Lands and Mines Department took action the next day and requested seven (7) departments of the Government of Johor to process the development plan submitted by the plaintiff but up to this date it has not been informed of the status of its application.
- f* The plaintiff then claimed that on 12 November 1992 United Engineers Bhd. (UEM), a public limited company, entered into an agreement with the Government of Malaysia and the State Government of Johor with respect to the design, construction and the operation of a second causeway between Malaysia and Singapore and the development of a new town in south-west Johor and consequently on 3 December 1992 a notification in Form A pursuant
- g* to s. 4 of the Act was issued notifying that the lands described in the schedule to that notification, which purportedly included the said land, are likely to be acquired for the purpose of the second causeway project and the development of the surroundings. Subsequently on 7 April 1993 UEM entered into an agreement with the State Government of Johor for the proposed acquisition
- h* of approximately 10,921 hectares of land in south-west Johor for the purpose of developing the new township and that it was a term and condition of the agreement that UEM will pay the compensation which has to be paid to the affected landowners.
- i* On 24 June 1993 a notification in Form D pursuant to s. 8 of the Act was issued by the Commissioner, Lands and Mines Office, Johor declaring that the lands specified in the schedule to the notification, which included the said land, are needed for the purpose of the "Second Malaysia-Singapore Causeway

project and the Development of the Gelang Patah area” and on 28 July 1993 an endorsement was made on the register document of title of the said land with regard to the acquisition. a

On 23 March 1995, after making a full enquiry pursuant to s. 12 of the Act, the Land Administrator issued Form H pursuant to s. 16 of the Act, which is a notice of award and offer of compensation to an affected landowner, awarding compensation in the sum of RM89,658,000 to the plaintiff, which the plaintiff claims worked out to about RM35,000 per acre or about 80 sen per square foot and on 12 August 1995 the plaintiff received partial compensation in the sum of RM67,243,500 for the said acquisition. The plaintiff has filed an application in Form N, pursuant to s. 38(1) of the Act requesting that its objection to the amount of the compensation awarded be referred to the Court for its determination. b
c

Meanwhile in June 1995, negotiations regarding the occupation and use of the said land were held between the plaintiff and the third defendant which, according to the plaintiff, is a member of the Renong group of companies of which UEM is also a member and on 22 June 1995 the plaintiff and the third defendant entered into an agreement (‘the Harvest Agreement’) wherein it was agreed that the plaintiff will retain physical possession of the said land until further notice but is obliged to pay to the third defendant a security deposit of RM255,000 and monthly rental of RM127,400. However after the execution of that agreement, “it came to the knowledge” of the plaintiff that the third defendant was proposing to develop the said land in a very similar manner as the plaintiff had itself proposed in its development plan and that the defendant was offering for sale the said land at RM17 per square foot. d
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As a result of the above circumstances, the plaintiff contends that the State Authority had acted *ultra vires* the provisions of s. 3 of the Act when it purported to issue the said Forms A and D (referred to above) and in consequence, the decision of the State Authority in acquiring the said land is a nullity and not binding in law. f
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The particulars of *ultra vires* as alleged by the plaintiff are:

- (i) the State Authority has misconstrued its statutory powers and/or acted wrongly in law when it determined that the acquisition of the said land “is beneficial to the economic development of Malaysia ... or to the public generally” within the meaning of s. 3(b) of the Act; h
- (ii) the purpose declared in the said Forms A and D do not come within the meaning of the expression “is beneficial to the economic development of Malaysia ... or to the public generally” within the meaning of the said s. 3(b); i
- (iii) that by virtue of (i) and (ii) above, the State Authority had no power in law to acquire the said land; and

- a* (iv) that the State Authority failed and/or refused to take into account at all or sufficiently three relevant considerations, viz.:
- (a) that the plaintiff is, and was, in as good a position as the Renong group to develop the said land for “the economic development of Malaysia ... or of the public” within the meaning of the said s. 3(b);
- b* (b) that the plaintiff had in fact submitted a development plan to the State Authority, which if approved, would have contributed to “the economic development of Malaysia ... or of the public” within the meaning of the said s. 3(b); and
- c* (c) that Art. 13(1) of the Federal Constitution gives constitutional protection to the plaintiffs right to ownership to the said land.

d The plaintiff alleged that the State Authority took into account an irrelevant consideration, namely, that the said land was required for the construction of the second causeway when in fact the said land is situated several miles away from the site of the causeway and cannot reasonably be required for that purpose. The plaintiff also alleged that the decision of the State Authority is unreasonable and a nullity and further or alternatively contended that, as the true beneficiary of the purported acquisition is the third defendant, there is a duty in law for the State Authority to give the plaintiff an opportunity of being heard before it took the decision to acquire the said land and that by failing to do so has acted in breach of the rules of natural justice by failing to give the plaintiff such a “pre-acquisition hearing” thereby rendering its decision a nullity.

e The plaintiff also alleged that the decision of the State Authority was taken in bad faith the particulars of which are the following:

- f* (i) that the Menteri Besar and the officers of the relevant government departments of the State Authority had actual knowledge of the plaintiff’s plan to develop the said land;
- g* (ii) that the Renong group had actual knowledge of the plaintiff’s plan to develop the said land;
- (iii) that the State Authority and the Renong group were using confidential information and/or insider information known to them to their advantage and to the detriment and prejudice of the plaintiff;
- h* (iv) that the defendants deliberately and wilfully disregarded the plaintiff’s application for development of the said land;
- (v) that the ultimate beneficiary of the purported acquisition is the third defendant whose shareholders are the Renong group and the State Secretary, Johor and thus the State Authority directly benefits from the acquisition resulting in the decision being tainted and a colourable one;
- i*

- (vi) that the State Authority and the Renong group would unfairly reap huge financial rewards from the purported acquisition to the detriment and prejudice of the plaintiff; *a*
- (vii) that the purported acquisition amounts to a conversion of the plaintiff's property; and *b*
- (viii) that the decision is so perverse that it is not merely a 'malice in law' but also a 'malice in fact'. *b*

By virtue of the above circumstances, the plaintiff contended that the State Authority acted in flagrant abuse of its powers and/or oppressively, arbitrarily or unconstitutionally and that as a result of the injury or loss that it has suffered, is entitled to recover damages from each of the defendants. *c*

In this action it is clear that an attack is made upon the validity of a purported acquisition by the State Authority, Johor and the substantial question is whether the declared purpose of the acquisition, namely, "Second Malaysia-Singapore Causeway project and Development of the Gelang Patah area", falls within the purposes which are allowable under the Act and whether it is open to the plaintiff as an affected landowner to attempt to invalidate the acquisition. The main bone of contention as found in the statement of claim is that the State Authority has misconstrued its statutory powers and/or acted wrongly in law when it determined that the acquisition "is beneficial to the economic development of Malaysia ... or to the public generally" within the meaning of s. 3(b) of the Act. *d*

It is of course clear that the Act allows the State Authority to acquire alienated lands for purposes which fall within the contemplation of s. 3. Section 3(b) which was amended by the Land Acquisition (Amendment) Act 1991 (Act A804) and which came into force on 13 September 1991 reads: *e*

The State Authority may acquire any land which is needed:

- (a) ... ; *f*
- (b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or *g*
- (c) *h*

Prior to its amendment s. 3(b) read as follows:

The State Authority may acquire any land which is needed:

- (a) ... ; *i*
- (b) by any person or corporation undertaking a work which in the opinion of the State Authority is of public utility; or *i*
- (c) *i*

- a* Section 2 of the Act provides that the word “land” means alienated land within the meaning of the State land law, land occupied under customary right and land occupied in expectation of title. In the instant case it is not disputed that the said land is alienated land. The Act begins by authorising the State Authority to acquire any land for any of the purposes provided in the said
- b* s. 3. The power is to be carried out by the machinery which is provided for in s. 4 on wards and that machinery consists, *inter alia*, in a notification in the **Gazette** which must declare the purpose. The procedure can be summarised as follows:
- c* (1) Whenever the State Authority is **satisfied** that any land in any locality in the State is likely to be needed for any of the purposes referred to in s. 3, a notification in Form A shall be published in the **Gazette**.
- d* (2) The Land Administrator shall then prepare and submit to the State Authority a plan of the whole area of such lands showing the particular lands which it will be necessary to acquire and a list of such lands in Form C (s. 7).
- e* (3) When the State Authority **decides** that any of the lands are needed for any of the purposes referred to in s. 3, a declaration in Form D shall be published in the **Gazette** and a list of the lands shall be included as a schedule in the declaration (s. 8).
- f* (4) The Land Administrator shall then commence proceedings for the acquisition of the land by giving public notice in Form E and by fixing the date of an inquiry for the hearing of claims to compensation for all interests in such land (s. 10).
- g* (5) On the date appointed under s. 10, the Land Administrator shall make full enquiry into the value of all the scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case according to the consideration set out in the First Schedule to the Act (s. 12).
- h* (6) Upon the conclusion of the enquiry, the Land Administrator shall prepare a written award under his hand in Form G (s. 14).
- i* (7) On making any award under s. 14, the Land Administrator shall prepare and serve on each person interested in such land a notice in Form H (s. 16) and consequently the Land Administrator may then take formal possession of any scheduled land by serving on the occupier or by posting thereon a notice in Form K (s. 22).
- (8) The proper registering authority, upon receipt of the notice in Form K, or to Land Administrator of his own motion after completing Form K, shall, upon the register document of title or other appropriate record in his possession make with respect to any scheduled land a memorial:
- (a) that the whole of such land has been acquired and has vested in the State Authority; or

(b) that so much of the land as is specified in the last column of the schedule to such Form has been acquired (s. 23); **a**

and upon the making of such a memorial the land shall vest in the State Authority as State land free from encumbrances (s. 66).

(9) Where the issue document of title or other deed evidencing title to any scheduled land has not previously been delivered to him, the Land Administrator shall by a notice in writing in Form L require any person in whose possession such document or deed may be, to deliver such document or deed to him; that person shall be legally bound to deliver it (s. 24). **b**

(10) Where the landowner or any person interested in the scheduled land has not accepted the Land Administrator's award or has accepted payment of the amount of award under protest as to the sufficiency thereof he may make objection to, *inter alia*, the amount of the compensation by a written application in Form N to the Land Administrator requiring that he refer the matter to the Court for its determination (ss. 37 and 38). **c**

Section 1 of the First Schedule to the Act provides the principles relating to the determination of compensation, *viz.*, the landowner will be compensated by the market value of such land. Section 3 of the First Schedule provides that in determining the amount of compensation to be awarded, certain matters shall not be taken into consideration, *inter alia*, any disinclination of the landowner to part with the land acquired. **d**

As stated earlier, by this action the plaintiff is asking for a declaration that the decision by the first and second defendants, which he claims is the 'State Authority' for the State of Johor, to acquire the said land is null and void and of no effect as the purpose declared in the said declaration do not come within the meaning of s. 3(b) of the Act. An action for a declaration is of course a means of challenging administrative acts and decisions which a plaintiff claims to be unlawful. **e**

The Act allows a State Authority to acquire any alienated land for any purpose which falls within the contemplation of s. 3 and looking at the provisions of the Act, I am of the view that it is a wide power. Parliament has provided in the Act what it considers sufficient means for securing adequate compensation to landowners affected by the acquisition and has left it to the State Authority to say to what extent it will be useful to that authority to exercise its statutable powers. **f**

In the instant case, the declaration in Form D states that the scheduled lands are to be acquired for the purpose of the second Malaysia-Singapore causeway project and for the development of the Gelang Patah area. The issue is whether that stated purpose falls within the contemplation of s. 3(b). It is clear that the amendment made to s. 3(b) has widened its scope even further. Prior to its amendment, s. 3(b) authorises a State Authority to acquire any land **g**

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- a* which is needed by a **person or corporation undertaking a work** which in the opinion of the State Authority is of **public utility**. According to s. 3 of the Interpretation Acts 1948 and 1967 (Consolidated and Revised - 1989) the word "person" includes "a body of persons, corporate or unincorporate" and according to Vol. 1 of Jowitt's *Dictionary of English Law* (2nd Edn.) the
- b* word "corporation" means "a succession or collection of persons having in the estimation of the law an existence and rights and duties distinct from those of the individual persons who form it from time to time". To me, the words "person" or "corporation" as found in the Act, either way, would include, *inter alia*, companies registered under the Companies Act 1965.

- c* Thus prior to that amendment it would seem that the State Authority is authorised to acquire any land even for a company undertaking a work which in the opinion of the State Authority is of public utility. This would of course encompass companies which have been incorporated to carry on undertakings which were formerly undertaken by statutory bodies, e.g., the supply of
- d* electricity by the former Lembaga Letrik Negara whose undertaking has now been taken over by a company called Tenaga Nasional Bhd.

- It is my view that the amendment made to s. 3(b) in 1991 has further enhanced or have widened the powers of a State Authority, *viz.* a State Authority may now acquire any land which is needed by any person or corporation, which
- e* would of course include companies registered under the Companies Act 1965, **for any purpose** which in the opinion of the State Authority is **beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public**. These words are wide and would seem to encompass host of activities not merely restricted to undertakings
- f* of works which are of public utilities. As long as the project or proposed development is, in the opinion of the State Authority, beneficial to the economic development of the country or to the State concerned or to the public or any class of public and that land is needed within the vicinity of the targeted area to carry out such a project or development, the State Authority is authorised
- g* under the said s. 3(b) to acquire such land. The purpose can be anything as long as it is in the opinion of the State Authority economically beneficial to the country, the State or to the public or any class of public.

- In the instant case, one of the objects of the acquisition, according to the
- h* declaration issued under s. 8, is for the purpose of the second causeway project, *viz.*, the proposed construction of a second causeway between Malaysia and Singapore. The other object of the acquisition is for the purpose of developing the Gelang Patah area which according to the plaintiff is to develop a new township. According to the statement of claim, the agreement between the Federal Government and the State Government of Johor and UEM is that
- i* the lands acquired are needed for the design, construction and the operation of the new causeway and the development of a new township, which I gather will be situated in the Gelang Patah area.

I would think that the creation of a new township in the Gelang Patah area would definitely amount to a purpose which is beneficial to the economic development of that part of the State of Johor and would also be beneficial to the public generally and also that part of the public residing within the surrounding areas. The public or that part of the public would definitely economically benefit from such a development, e.g., if industries are situated within the township, jobs will be created resulting in opportunities for more commercial activities the cumulative effect of which would enhance the economic development of that part of the State. Consequently the locality of industries adjacent to the township may enhance further bi-lateral trade between Malaysia and Singapore due to its proximity to the second causeway and inevitably the accessibility of various facilities available in the two countries and this would definitely be beneficial to the economic development of Malaysia as a whole.

To me, the plaintiffs contention that the said land is situated several miles away from the proposed causeway is irrelevant. The said declaration clearly refers to two objects and whether the said land is situated within the vicinity of the proposed causeway or the township is immaterial. What really matters is that the said land form part of the scheduled lands. The plaintiff's contention that it is, and was, in as good a position as the Renong group to develop the said land for the purpose within the meaning of the said s. 3(b) is also irrelevant. To me, this contention seems to suggest that the plaintiff is not seriously disputing that the purpose as stated in the said declaration falls within the contemplation of s. 3(b).

Anyway, s. 8(3) of the Act provides that a declaration in Form D shall be conclusive evidence that all the scheduled lands referred to therein are needed for the purpose specified therein. That provision clearly provides that the declaration in Form D is conclusive as to the purpose for which the scheduled lands are required which would mean that Parliament has decided that the State Authority is the best judge to determine what amounts to a purpose which is beneficial to economic development within the contemplation of s. 3(b). In the instant case the State Authority for the State of Johor has taken the said land with the object of using it for a purpose authorised by the Legislature and I do not think that the Court can restrain the State Authority from doing so. The purpose of the acquisition has been spelt out in the said declaration and was conclusive of the actual existence of that purpose and it was also sufficiently specific to satisfy the requirements of s. 3(b).

A declaration in Form D must be conclusive if the meaning of the Act is to be effective. Since it is conclusive evidence as stated in s. 8(3), I cannot see how it is possible to invalidate it collaterally by showing that an intention to use it for the purpose notified did not exist. If the declared purpose falls outside s. 3(b) of the Act the acquisition must fail but looking at the said declaration *vis-a-vis* s. 3(b), I cannot see how that can be possible. As

- a* discussed earlier, the current s. 3(b) is so wide that it encompasses a host of activities which may in the opinion of the State Authority bring economic benefit to the country or to the public and the building of a second causeway between Malaysia and Singapore and the development of a new township within the surrounding areas will definitely bring about such an effect.
- b* Whether that is the purpose or is not, the purpose is a matter depending entirely upon the mind and policy of the State Authority and it must be remembered that it is an exercise of a discretionary power conferred by statute. The notification of acquisition is made decisive and concludes the whole matter and it follows that an affected landowner may not go behind the notification
- c* otherwise it makes s. 8(3) meaningless. In *Ng Chee Keong & 3 Ors. v. Lembaga Letrik Negara & Anor.* [1991] 1 CLJ 567, at p. 569, Lim Beng Choon J said:
- d* In any case if the plaintiffs were challenging the validity of the acquisition they are precluded from doing so by a writ action because under the provisions of the Land Acquisition Act the only matters that can be litigated by the Court are limited to matters as prescribed in Part V of the said Act namely:
- (a) the measurement of the land;
 - (b) the amount of compensation;
 - (c) the person to whom it is payable;
 - (d) the apportionment of the compensation.
- (see s. 37 of the said Act).
- f* As stated earlier, an action for a declaration is a means of challenging administrative acts and decisions which a plaintiff claims to be unlawful and in *Imperial Tobacco Ltd. v. Attorney-General* [1981] AC 718, at p. 750, Lord Lane said:
- g* Anyone is on principle entitled to apply to the Court for a declaration as to their rights unless statutorily prohibited expressly or by necessary implication.
- The Act allows the State Authority to acquire alienated lands for purposes which fall within the contemplation of s. 3 and it is a wide power and Parliament has prescribed a special statutory formulae which ostensibly exclude
- h* judicial review, the only matters that can be litigated by the Court are limited to those prescribed in Part V of the Act. Parliament has provided what it considers sufficient means for securing adequate compensation to the land-owners affected by the acquisition and has left it to the State Authority to say to what extent it will be useful to that authority to exercise its statutable
- i* powers.

In *Syed Omar bin Abdul Rahman Taha Alsagoff & Anor. v. Government of the State of Johor* [1976] 1 MLJ 241 the High Court dismissed the plaintiff's application for a declaration that acquisition proceedings in respect of their lands were illegal and null and void. In that case, the declaration in Form D states that the scheduled lands were required for "Pembinaan Pelabohan, Perumahan dan Perusahaan". The plaintiff appealed to the Federal Court and in dismissing the appeal, Suffian LP said that the declaration issued under s. 8 of the Act was conclusive evidence that the lands referred to therein were needed for the purpose specified therein and therefore was no merit in the contention that the acquisition proceedings were null and void. The plaintiff had alleged, *inter alia*, that although the scheduled land were needed for a harbour, for housing and for industry, their lands were not demarcated for any of the three purposes but instead were marked for "kegunaan khas" (special purposes) which was not a purpose enumerated in s. 3 of the Act and that as their lands were not needed for any of the purposes authorised by s. 3, the intended acquisition was null and void; the plaintiffs also alleged that the State Government was acting *mala fide*. At p. 245 Suffian LP said:

Though the Johor State Government had written "kegunaan khas" against the applicants' lands, finally they were acquired for a shipyard and it is argued that this change of intention on the part of Government also invalidates the acquisition proceedings. With respect we do not think that there is any merit on this argument either, for use as a shipyard is still use for an industrial purpose which is specified in the first paragraph of Form D.

In *Yew Lean Finance Development (M) Sdn. Bhd. v. Director of Lands and Mines, Penang* [1977] 2 MLJ 45 the main issue before the Court was whether the notice stating that the land was being acquired for residential, industrial and public purposes was null and void because it was vague and did not particularise the specific purpose. At p. 46 Arulanandom J said the

... Government is the sole authority to decide what is, or, what is not, a public purpose and the decision by Government in this respect cannot be questioned by a civil Court.

and at p. 47, said:

It is therefore quite clear that once a **Gazette** notification under s. 8 is given it is conclusively established that the lands are needed for the purpose stated. The only complaint the owners of acquired lands can have will be if provisions of the Act have not been complied with. Furthermore, if the compensation awarded to them is not adequate they have a right to appeal to the High Court. Apart from that, the question of acquisition cannot be gone into.

The above authorities confirm that the declaration under Form D is conclusive as to the purpose for which the land is required and that the State Authority is the best judge to determine what is the purpose.

- a* In the instant case, the plaintiff has also alleged that the decision of the State Authority to acquire the said land was taken in bad faith, namely, that the Menteri Besar, the officers of the relevant government departments, the State Authority and also the Renong group knew about the plaintiff's plan to develop the said land. It also alleged that the defendants deliberately and wilfully
- b* disregarded its application to develop the said land.

- The above allegation seems to have stemmed from the approval in principle given by the then Menteri Besar in 1990 to the plaintiff's proposal to develop the said land. Looking at the provisions of the National Land Code (hereafter referred to as "the Code"), I do not think that such an approval in principle
- c* can at all amount to an approval which binds the State Authority. The said land was cultivated with oil palm and this would denote that its category of land use prior to the acquisition was "agriculture". The plaintiff stated that it decided to develop and convert the said land into "a mixed commercial and residential developments". That, according to the Code, would require an
- d* approval of the State Authority, namely, for the alteration of that category of land use of "agriculture" to "building" or "industry" as provided for under s. 124 of the Code read together with s. 52 of the Code or alternatively would require an approval from the State Authority for surrender and re-alienation of the said land under s. 204B to 204E of the Code. The approval or rejection
- e* of an application made either way shall be at the discretion of the State Authority and a Menteri Besar, with respect, is not the State Authority.

- In the statement of claim, there seems to be some confusion as to who is the State Authority. Section 2 of the Act provides that the words "State Authority means "the Ruler or the Yang di-Pertua Negeri of the State, as the case may require". Section 5 of the Code provides that the words "State Authority" means "the Ruler or Governor of the State, as the case may be". Incidentally, s. 3 of Part I of the Interpretation Acts 1948 and 1967 (Consolidated and Revised - 1989) which applies to all laws, whether enacted before or after the commencement of the Interpretation Act 1967, revised under
- f* the Revision of Laws Act 1968 provides that the words "State Authority" means "the Ruler or Yang di-Pertua Negeri of a State and includes, in Negeri Sembilan, the Yang di-Pertuan Besar acting on behalf of himself and the Ruling Chiefs". Article I of the Second Part of the Law of the Constitution for the State of Johor provides that the word "Ruler" means "His Highness the Sultan".
- g* As a consequence of adopting constitutional monarchy, the Sultan is vested with the executive authority of the State but as a constitutional ruler he is to act in accordance with the advice of the Executive Council (Exco) or a member thereof acting under the general authority of the Exco; the relevant Articles of the State Constitution reads:
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- i* Article II. (1) The executive authority of the State shall be vested in the Ruler but executive functions may by law be conferred on other persons or authorities.

(2) All executive authority of the State shall be expressed to be taken
in the name of the Ruler. *a*

Article VII (1) In the exercise of his functions under the Constitution or **any law**
... the Ruler shall act in accordance with the advice of the Executive Council or
of a member thereof acting under the general authority of the Council ...

Article IV (1) provides that the Ruler shall appoint an Executive Council and
Article IV (2)(a) and (b) provides that the Ruler shall appoint as Menteri Besar
to preside over the Executive Council a member of the Legislative Assembly
and that the Ruler shall on the advice of the Menteri Besar appoint not more
than eight members from among the members of the Legislative Assembly to
sit on the Exco. The same Article also provides that the Exco shall be
collectively responsible to the Legislative Assembly. Article VI provides that
the persons who are holding the posts of the State Secretary, State Legal
Adviser and State Financial Officer respectively shall have the right to take
part in the proceedings of the Exco but shall not have any vote. *b*

In the exercise of his functions under the law, the Ruler shall act in
accordance with the advice of the Exco and this would of course encompass
the powers that the Ruler, as the State Authority, have under the Act and
the Code. As stated by Raja Azlan Shah FJ (as he then was) in *PP v. Datuk*
Haji Harun bin Haji Idris (No. 2) [1977] 1 MLJ 15 at p. 20: *c*

It is the Executive Council who is the executive organ of the State Authority
and exercises executive functions in the name of the Ruler. *d*

Thus, from the above provisions of the law, it is clear that the plaintiffs proposal
to develop and “convert” the said land into a mixed commercial and residential
development which has been “approved in principle” by the Menteri Besar
would require a formal approval from the Exco as such a proposal would
necessitate an application to the Exco for an alteration of category of land
use under the provisions of the Code. The Menteri Besar acting alone is not
the Exco and any approval given by him whilst acting alone cannot bind the
Exco. He only presides over the Exco. That being the positions, I cannot find
any merit in the plaintiffs allegation that the first and second defendants have
deliberately and wilfully disregarded the plaintiff’s application for development
of the said land. The plaintiff’s plan to develop the said land can never
materialise unless the necessary approvals from the Exco have been obtained. *e*

The statement of claim also reveals that the acquisition exercise, which affected
the said land, involved 10,921 hectares of land. The said land, according to
the plaintiff, comprise an area of 2,466 acres which according to my
calculations is equivalent to approximately 998 hectares or about 9% of the
scheduled lands. The plaintiff has alleged that the third defendant, which seems
to me to be an entity presently having some form of control over the said
land as evidenced by the said Harvest Agreement, is proposing to develop the
said land in a very similar manner as the plaintiff had itself earlier proposed *f*

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- a* to the Menteri Besar, and is now offering the said land for sale at RM17 per square foot whereas the compensation awarded to the plaintiff for the acquisition of the said land was merely equivalent to about 80 sen per square foot. I find it necessary to refer to this averment as the plaintiff has contended that this is one of the circumstances which show that the State Authority had acted *ultra vires* the provisions of s. 3 of the Act.
- b*

- I cannot see any merit in the above contention. It must be remembered that upon completion of the acquisition proceedings pursuant to the provisions laid down in the Act, the scheduled lands, according to s. 66 of the Act, vest in the State Authority. Upon vesting, it becomes "State land". State land is not defined in the Act. However s. 2 of the Act provides that "State land law" means "the State law for the time being in force relating to land and land tenure and the registration of title thereto and the collection of revenue therefrom" which to me would mean the Code, an Act which applies to the State of Johor, and s. 5 of the Code provides "State land" means "all land in the State ... other than:
- c*
- d*

(a) alienated land;

(b) reserved land;

- e* (c) mining land;

(d) any land which, ... is for the time being reserved forest.

- Based upon the above provisions of the law, it is clear that any land acquired under the Act becomes State land and s. 42 of the Code provides that the State Authority shall have power to alienate any State land in accordance with the provisions of the Code. In relation to the allegation that the State Authority has acted *ultra vires*, I do not wish to touch upon the rationality of the said Harvest agreement which inevitably would lead to the question as to whether the third defendant has the *locus standi* to deal with the said land, i.e., whether the said land has been alienated to them, as this issue has no bearing on the application before me.
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- The Act allows to State Authority to acquire any land which is needed by any person or corporation for any purpose within the contemplation of s. 3(b) and upon completion of the acquisition proceedings, it becomes State land and the State Authority is authorised to alienate it to the person or corporation concerned. Upon its disposal by the State Authority to the person or corporation concerned that person or corporation is at liberty to dispose or use or deal with the land to achieve the purpose of the acquisition and according to s. 68A of the Act, such action cannot invalidate the acquisition of the land; s. 68A reads:
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Where any land has been acquired under this Act, whether before or after the commencement of this section, no subsequent disposal or use of, or dealing with, the land, whether by the State Authority or by the Government, person or corporation on whose behalf the land was acquired, shall invalidate the acquisition of the land. *a*

That section was introduced into the Act by the same Act A804 which amended s. 3(b) and I would think that the intention of the Legislature was clear when it introduced s. 68A; thus the person or corporation on whose behalf the land was acquired is at liberty to subsequently dispose off the land and that action shall not invalidate the acquisition, which, to me, would imply that the acquisition cannot be challenged if such an event occurs. That being the case, I find that even if I assume that the averments of *ultra vires* in the statement of claim are correct, I cannot see how such averments can disclose a cause of action. *b*
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In his submission, Counsel for the plaintiff has also contended that Art. 13(1) of the Federal Constitution gives constitutional protection to the plaintiff's right to ownership of the said land; Art. 13 reads: *d*

- (1) No person shall be deprived of property save in accordance with law.
- (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation. *e*

With respect, I do not see the relevance of this reference at all. There are two clauses in that Article and they are not in effect mutually exclusive (*S. Kulasingam & Anor. v. Commissioner of Lands, Federal Territory & Ors.* [1982] 1 MLJ 204). When a State Authority acquires any alienated land, that action of course amounts to depriving the landowner of his land but then it is acting in **accordance with law**, namely, the Act itself. The Act is clearly a law which provides for the compulsory acquisition of land but it is also a law which provides that the dispossessed landowner will receive adequate compensation, i.e., the State Authority shall compensate the owner for the land at its market value (First Schedule to the Act). The category of land use applicable to the scheduled land at the date of its acquisition is also an important factor in assessing the amount of compensation to be paid; s. 1(2) of the First Schedule provides: *f*
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In assessing the market value the effect of any express or implied condition of title restricting the use to which the scheduled land may be put shall be taken into account. *h*

This would mean that if the title to the land concerned states that its category or land use is 'agriculture', the compensation paid would be the market value of land with that category of land use; the value would of course have to be assessed accordance with the principles relating to valuation as practised and which have been accepted by the Courts. *i*

- a* Incidentally the plaintiff has also alleged that the State Authority has acted in breach of the rules of natural justice by failing to give the plaintiff a “pre-acquisition hearing” thereby rendering its decision a nullity. I do not propose to go into this. It has been settled in *S. Kulasingam & Anor. v. Commissioner of Land, Federal Territory & Ors.* [1982] (referred to earlier) that there is nothing in the Act imposing any obligation for a pre-acquisition hearing in marked contrast to the specific provisions of an inquiry and hearing in respect of the quantum of compensation payable, and that being so, I cannot see any merit in the above contention.

- c* In relation to this application, which is made under O. 18 r. 19(1)(a), the only issue before me is whether the statement of claim discloses a cause of action and after looking at the totality of the averments found in the statement of claim, I am of the view that the pleading does not disclose any cause of action at all in order to maintain the plaintiff’s suit against the first and second defendants. In opposing the application, Counsel for the plaintiff cited the case of *Abu Bakar bin Haji Yusuf v. Mohamed Hamzah bin Hanafiah & Anor.* [1978] 2 MLJ 78 which dealt with O. 25 r. 4 of the Rules of the Supreme Court - that rule empowers the Court to strike out a pleading where the pleading discloses no reasonable cause of action and at p. 79 the Judge said:

- e* As a general rule, the order under the above is an interlocutory order. It is only in plain and obvious cases that recourse should be had to this summary procedure. The mere fact that the case is weak and unlikely to succeed is no ground for striking out the pleading.

- f* The next point is to consider to what extent the Court is entitled to examine while exercising its power. Under O. 25 r. 4, where the allegation is that the statement of claim discloses no reasonable cause of action, only the pleadings and its documents alone should be assumed to be true. That was held by the Court of Appeal in *Peck v. Russel & 2 Ors.* [1923] 4 FMSLR 32.

- g* I am aware that it has been said that so long as the pleading discloses some cause of action or raise some question fit to be decided by the Judge, the mere fact that the case is weak and not likely to succeed at the trial is no ground for the pleading to be struck out (*Moore v. Lawson* [1915] 31 TLR 418 CA; *Wenlock v. Moloney* (1965) 1 WLR 1238; [1965] 2 All ER 871 CA). It has also been said that it is only in plain and obvious cases that recourse should be had to this summary process under O. 18 r. 19(1) (*Hubbuck v. Wilkinson* [1899] 1 QB 86) and that this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it “obviously unsustainable” (*Att-Gen. of Duchy of Lancaster v. L & NW Ry Co.* [1892] 3 Ch. 274, CA). In *Tractors Malaysia Bhd. v. Tio Chee Hing* [1975] 2 MLJ 1, Lord Diplock said (at p. 1):

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The power to dismiss an action summarily without permitting the plaintiff to proceed to trial is a drastic power. It should be exercised with the utmost caution. **a**

But in the face of statutory prohibitions expressly or necessarily implied in the Act as discussed above, and after having cautioned myself, I am of the view that the plaintiff's action against the first and second defendant is "obviously unsustainable". The pleading do not at all disclose some cause of action or even any raise any question fit to be decided. Furthermore, s. 8(1) of the Specific Relief Act 1950 provides that if any person is dispossessed without his consent of immovable property **otherwise than in due course of law** he may, by suit, recover possession thereof and s. 8(3) provides that no suit under this section shall be brought against any Government in Malaysia. The plaintiff has, by virtue of the acquisition by the State Authority, been dispossessed of its land **in due course of law** and even if assuming that he proves that there was malice, I cannot see how he can bring a suit against the State Government of Johor in the face of such a provision. **b**

The plaintiff has in fact alleged that there was malice in law and malice in fact. Malice in law is wrongful conduct which violates a right of the plaintiff and malice in fact means no more than an indirect motive. In *Allen v. Flood* [1898] AC 1, at p. 29, Cave J said that "malice alone never constitutes a cause of action, or, in other words does not make that a wrong which otherwise would not be a wrong". In *Bradford Corporation v. Pickles* [1895] AC 587 the Judge said that the exercise by a person of a legal right does not become illegal because the motive of action is improper or malicious. In the instant case, there has been no violation of the plaintiff's rights as an acquisition exercise carried out pursuant to the provisions of the Act by the State Authority or any of its servants or representatives cannot at all amount to a violation of a right. Under the circumstances I am unable to see how the plaintiff can sue the first and second defendants as wrongdoers when no wrong has been committed by either defendant. **c**

Even assuming that the averments in the plaintiff's pleading are correct, I find that the suit against the first and second defendants is unmaintainable and accordingly I allow the first and second defendants' application to strike out the pleading as against them, with costs. **d**

As to whether the first defendant is a necessary or a correct party to this suit has not been raised or argued by the learned State Legal Adviser who appeared for that party. I would like to reiterate the stand that I have taken in the case of *Stamford Holdings Sdn. Bhd. v. Kerajaan Negeri Johor & 4 Ors.* [1995] 3 CLJ 114, namely, that if it is sought to establish liability against the State Authority under the provisions of the Act, it should be the Land Administrator in his office - the State Government should never have been joined in these proceedings. I am also of the view that the plaintiff's stand **e**

- a* that the first defendant, i.e., the State Government of Johor and/or the second defendant, i.e., the Land Administrator, Johor is the State Authority as defined in s. 2(1) of the Act (para. 3 of the statement of claim) is incorrect.

Application allowed with costs.

- b* Reported by Harjit Singh Pannu
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